

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 478 of 2020

1. Devendra Kumar, S/o Late Mahanguram, Aged About 50 Years.

2. Khagesh, S/o Mahanguram, Aged About 40 Years.

3. Smt. Sulochana, W/o Devendra Kumar, Aged About 45 Years.

Petitioner Nos. 1 to 3 are Caste Kalar, R/o Tadoki, Tehsil Antagarh, District- Uttar Baster Kanker (C.G.)

4. Sonsay, S/o Late Sanhaguram, Aged About 55 Years.

5. Sonu, S/o Late Sanhaguram, Aged About 48 Years, Caste Kalar

6. Smt. Bindabai, W/o Sonsay, Aged About 50 Years, Caste Kalar

Petitioner Nos. 4 to 5 are R/o Kaleparas, Tehsil Antagarh, District- Uttar Baster Kanker (C.G.)

7. Bharat, S/o Late Cherka, Aged About 50 Years, Caste Kalar, R/o Village Tadoki, Tehsil Antagarh, District- Uttar Baster Kanker (C.G.)

8. Siyaram, S/o Late Cherka, Aged About 32 Years, Caste Kalar, R/o Village Aidanaar, Tehsil Antagarh, District- Uttar Baster Kanker (C.G.)

--- Petitioners

Versus

1. Sharvan Kumar, S/o Late Chital Singh, Aged About 42 Years.

2. Ishwar, S/o Late Chital Singh, Aged About 26 Years.

3. Smt. Dukhibai @ Durga, W/o Late Chital Singh, Aged About 60 Years.

Respondent Nos. 1 to 3 are Caste Kalar, R/o Village Tadoki, Tehsil Antagarh, District- Uttar Baster Kanker (C.G.)

4. The State of Chhattisgarh, Through Collector Uttar Baster Kaker (C.G.)

--- Respondents

For Petitioners	:	Mr. Raj Kumar Pali, Advocate.
For Respondent No. 1 to 3	:	Mr. Sunil Sahu, Advocate.
For State/ respondent No. 4	:	Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

11/01/2021

1. This writ petition has been brought under Article 227 of the Constitution of India, praying to quash the order dated 14.09.2020 passed by learned Additional District Judge, Bhanupratappur, District- North Bastar Kanker (C.G.) in Misc. Civil Appeal No. 04/2020, confirming the order dated 31.07.2020 passed by Civil Judge Class-I, Bhanupratappur in Civil Suit No. 4A/2020.
2. The facts of the case is that the petitioners have filed a civil suit against the respondents pleading that the petitioners are rightful owners of the suit property. Father of respondent No. 1 had illegally got entered his name in the revenue record and on that basis, the respondents/ defendants have filed an application before Tahsildar- Antagarh for partition. Relief of declaration has been prayed for and a separate application has been filed under Order 39 Rule 1 & 2 of the C.P.C. praying for temporary injunction, for staying the proceeding of partition pending before the Tahsildar. This application was contested by the respondents side and then, the order dated 31.07.2020 was passed by the trial court dismissing the application. Misc. Civil Appeal No.

04/2020 preferred by the petitioners, has been dismissed by the impugned order.

3. It is submitted by learned counsel for the petitioners that the family tree of the petitioners has been shown in the plaint, which does not include the name of the respondents/ defendants. The documentary proof, on which, the petitioners have placed their reliance, is the revenue document of the year 1944-45, in which, only name is mentioned i.e. Karan, S/o Donda recorded as agriculturist of the suit property. The name of predecessors of the private respondent- Chital Singh, is found mentioned for the first time in the revenue record of the year 1962-63. The respondents/ defendants have no relation with the petitioners/ plaintiffs, hence, the entry made in the revenue record of the year 1962-63 is erroneous and illegal regarding which, it is alleged that the mutation in the name of Chital Singh has been procured unlawfully.
4. It is further submitted that the resolution passed by the Gram Panchayat for partition of the suit property, is erroneous. It has been pleaded by the petitioners/ plaintiffs that they are in exclusive possession of the suit property, which has been erroneously disbelieved by the courts below. Therefore, the petitioners had the prima facie case, the balance of convenience in their favour and they are the persons, who would suffer irreparable injuries, if relief would not be granted to them. Hence, it is prayed that the impugned orders may be quashed and relief of temporary injunction may be granted to the petitioners.

5. Learned counsel for respondent No 1 to 3 submits that name of ancestors of the respondents, is reflected in the revenue record since 1966, which was never challenged by the petitioners side. It is submitted that the petitioners have mentioned the wrong family tree, whereas, the fact is this that, the respondents are also dependents of Donda, who is ancestor of the petitioners. It is further submitted that the respondents are in possession of the suit property and further, they have in their favour the resolution passed by the Gram Panchayat for partition of the suit property. Hence, the learned trial court and the appellate court, both have not committed any error in passing the order and there is no need of this court to exercise the jurisdiction under Article 227 of the Constitution of India.
6. In reply, it is submitted by learned counsel for the petitioners that no entry is found with respect to the respondents prior to year 1962-63 and it has been specifically pleaded that the entry in the year 1962-63, has been procured unlawfully. The petitioners could not challenge the entry, because they did not have knowledge about the same and they came to know about this for the first time, when they received the notice in the partition case. Therefore, the petitioners are entitled for grant of relief.
7. I have heard the learned counsel for the parties and perused the documents placed on record.
8. Considered on the submissions. The main reliance of the petitioners is only the document of the year 1944-45, which has

been filed as Annexure P/5, which appears to be book of accounts mentioning revenue against the name entered as agriculturist. However, the name of the agriculturist is only one, which is shown as Karan, S/o Donda. The other document of the year 1962-63, which mentions name of the predecessor of the petitioners and the predecessors of the respondents, is regular Bhu-Rajswa Patrak mentioning Khasra Nos. of the land recorded in their name, which is a part of the suit property. Therefore, at present, there is no such document produced by the petitioners before this court or before the court below, to show exclusion of the name of the ancestors of the respondent in the revenue records. Hence, the finding of the court below that the prima facie, is not in favour of the petitioners/ plaintiffs, cannot be said to be erroneous. Hence, I do not find any reason to interfere with the impugned order and the order of the trial court.

9. The petitioners are at liberty to move application before the Tahsildar under Section 178 of the Chhattisgarh Land Revenue Code, 1959 making prayer for stay of the proceeding, on the ground that a civil suit has been filed for declaration of title over the suit property.
10. In view of the above, the instant writ petition is disposed of at motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge